IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

1. CRIMINAL APPLICATION NO.3237 OF 2006,
2. CRIMINAL APPLICATION NO.3238 OF 2006,
3. CRIMINAL APPLICATION NO.3239 OF 2006
AND
4. CRIMINAL APPLICATION NO.3240 OF 2006

Shri Vijay Menon ...Applicant
(In all the Applications)

Vs.

M/s.Jain Steel & Anr. ...Respondents
(In all the Applications)

Shri M.S.Mohite, for the Applicant in all the Applications.
Shri M.S. Bhandari for the Respondent No.1 in all the Applications.
Ms S.V.Gajare, A.P.P for the State in all Applications.

CORAM : A. S. OKA, J.
DATE : OCTOBER 11, 2006.

P.C.:

1. Notice was issued on 07th September, 2006 with a direction that these Applications should be heard and disposed of at admission stage. I have heard the learned counsel appearing for the Applicant and the learned counsel appearing for the first Respondent in these four Applications.

2. Facts of these Applications are more or less identical. Therefore, I am referring to the facts of the case in Criminal Application No.3237 of 2006. The

first Respondent is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. The Applicant is arraigned as one of the accused in the said complaint. Process was issued on 24th June, 2004 by the learned Judicial Magistrate. On 15th July, 2005 a revision Application was filed by the Applicant in the Sessions Court for challenging the order issuing process. By an order dated 06th July, 2006, the learned 4th Adhoc Additional Sessions Judge, Kolhapur rejected the Application for condonation of delay. He, however, passed a separate order on the revision Application on the same day dismissing the revision Application as barred by limitation. However, while passing the said order on the Revision Application, he has proceeded to consider the merits of the case.

3. Shri Mohite appearing for the Applicant submitted that sufficient cause was made out for condonation of delay as was clear from the averments made in the application for condonation of delay. He submitted that the learned Judge ought to have adopted a liberal approach. The learned counsel for the first Respondent pointed out that there is hardly any explanation for delay caused after the service of

summons of the private complaint and that is the reason why the learned Judge has rejected the application for condonation of delay. He pointed out that the learned Judge has considered all the grounds pleaded in the Application for condonation of delay and has rejected the same and therefore, no interference is called for.

4. I have considered the submissions. According to the case of the Applicant, the summons was served to him in the month of January 2005. It appears that certified copies of the complaints were received by the Applicant in the first week of February 2005. The learned Judge held that there was no explanation for delay from February 2005 till 15th July, 2005 when the Revision Application was filed. The submission of Shri Mohite is that there were divergent views taken as regards maintainability of the revision Application in the Sessions Court and that is one of the reasons why the Applicant has taken more time in filing revision Application.

5. It is well settled that while dealing with the Application under section 5 of the Limitation Act, 1963, the court is required to adopt liberal approach. When an Application for condonation of delay is made,

invariably there is some default on the part of the Applicant. The occasion for filing such application arises only because there is some default which has resulted into delay. The certified copy of the complainant was received by the Applicant in February 2005. The Applicant has stated that he is frequently required to travel out of Kolhapur for his business. It is alleged by him that initially he was advised to file a Writ Petition in this Court for challenging order issuing process. Considering the facts and circumstances of the case, the learned Judge should have condoned the delay by awarding costs to the first Respondent.

6. After dismissing the Application for condonation of delay, there was no occasion for the learned Judge to pass a separate order on the revision Application. The said separate order shows that the learned Judge has considered the merits of the challenge in the revision Application and has even recorded a finding that the impugned order was not legal, proper and correct. When the learned Judge rejected the Application for condonation of delay, the learned Judge could not have gone into the merits of the submissions made on revision Application. In fact,

once Application for condonation of delay was rejected, there was no occasion even to register the Revision Application and to deal with it in any manner. Since the learned Judge has recorded findings on merits, even the order passed on the Revision application on 06th July, 2006 will have to be quashed and set aside.

7. In my view, the Application for condonation of delay in each case deserves to be allowed subject to payment of costs of Rs.2,500/- to the first Respondent.

8. Hence, I pass the following order:

CRIMINAL APPLICATION NO.3237 OF 2006

(i) The impugned Judgments and Orders dated 06th July, 2006 (Annexures 'A' and 'B') are quashed and set aside.

(ii) Delay in filing the Revision Application is condoned subject to Applicant paying costs of Rs.2,500/- to the first Respondent within a period of six weeks from today.

(iii) After payment of costs, the Revision

Application filed by the Applicant shall be heard on merits.

(iv) The parties are directed to appear before the learned Sessions Judge, Kolhapur on 04th December, 2006 at 11.00 a.m. The learned Judge may himself hear the Revision Application or may assign it to any other court as per his administrative convenience.

(v) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March, 2007.

(vi) It is made clear that all contentions on merits in the Revision Application are expressly kept open.

CRIMINAL APPLICATION NO.3238 OF 2006

(i) The impugned Judgments and Orders dated 06th July, 2006 (Annexures 'A' and 'B') are quashed and set aside.

(ii) Delay in filing the Revision Application is

condoned subject to Applicant paying costs of Rs.2,500/- to the first Respondent within a period of six weeks from today.

(iii) After payment of costs, the Revision Application filed by the Applicant shall be heard on merits.

(iv) The parties are directed to appear before the learned Sessions Judge, Kolhapur on 04th December, 2006 at 11.00 a.m. The learned Judge may himself hear the Revision Application or may assign it to any other court as per his administrative convenience.

(v) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March, 2007.

(vi) It is made clear that all contentions on merits in the Revision Application are expressly kept open.

CRIMINAL APPLICATION NO.3239 OF 2006

(i) The impugned Judgments and Orders dated 06th July, 2006 (Annexures ‘A’ and ‘B’) are quashed and set aside.

(ii) Delay in filing the Revision Application is condoned subject to Applicant paying costs of Rs.2,500/- to the first Respondent within a period of six weeks from today.

(iii) After payment of costs, the Revision Application filed by the Applicant shall be heard on merits.

(iv) The parties are directed to appear before the learned Sessions Judge, Kolhapur on 04th December, 2006 at 11.00 a.m. The learned Judge may himself hear the Revision Application or may assign it to any other court as per his administrative convenience.

(v) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March, 2007.

(vi) It is made clear that all contentions on merits

in the Revision Application are expressly kept open.

AND

CRIMINAL APPLICATION NO.3240 OF 2006

(i) The impugned Judgments and Orders dated 06th July, 2006 (Annexures 'A' and 'B') are quashed and set aside.

(ii) Delay in filing the Revision Application is condoned subject to Applicant paying costs of Rs.2,500/- to the first Respondent within a period of six weeks from today.

(iii) After payment of costs, the Revision Application filed by the Applicant shall be heard on merits.

(iv) The parties are directed to appear before the learned Sessions Judge, Kolhapur on 04th December, 2006 at 11.00 a.m. The learned Judge may himself hear the Revision Application or may assign it to any other court as per his administrative convenience.

(v) The Revision Application shall be decided as expeditiously as possible and preferably on or before 31st March, 2007.

(vi) It is made clear that all contentions on merits in the Revision Application are expressly kept open.

JUDGE